

REMARKS

Applicants appreciate the consideration of the present application afforded by the Examiner. Claims 45-62 are pending in this application. Claims 1-44 had been previously canceled. Favorable reconsideration and allowance of the present application are respectfully requested in view of the following remarks.

Interview Summary

Applicants thank the Examiner for the courtesies extended during the personal interview conducted in the U. S. Patent and Trademark Office on July 9, 2009. During the Examiner interview, rejections under 35 U.S.C. § 101 were discussed.

With respect to claims 45 and 58, the Examiner suggested we point out where in the specification the claimed apparatus is considered hardware to overcome the rejection and that no amendments to the claims were necessary (*See response below for citation to specification*).

With respect to claims 59 and 60, which are directed to method claims, the Examiner agreed with our proposed claim amendments incorporating a recitation of structure into the claims in order to tie the method to another statutory class. Moreover, the Examiner requested, as above, that we point out where in the specification hardware (instead of software) is recited (*See response below for citation to specification*).

With respect to claims 61 and 62, the Examiner agreed with our proposed amendments that incorporate a computer readable medium into the claim language to overcome this rejection, as long as a computer readable medium is recited in the specification (*See response below for citation to specification*).

During the Examiner interview, rejections under 35 U.S.C. § 102 were also discussed. The Examiner and his supervisor agreed that the reference does not disclose or suggest the features of the independent claims, pending further review of the reference.

Claim Rejections under 35 U.S.C. §101

Claims 45 and 58-62 stand rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter.

This rejection is respectfully traversed as to claims 45 and 58 and their dependent claims. Claims 45 and 58 recite statutory subject matter under 35 U.S.C. § 101 which includes “new and useful process, **machine**, **manufacture**, or composition of matter” (emphasis added). The claims clearly recite an apparatus and thus constitutes statutory subject matter. Moreover, in the brief description of the figures, the various units claimed in Figure 2 are listed as “a specific example of a hardware structure of cellular phone 1”. If the Examiner maintains this rejection, Applicants request legal authority be shown for this position demonstrating that an apparatus is not statutory subject matter.

Claims 59 and 60 have been amended to appropriately recite statutory subject matter. Moreover, in the brief description of the figures, the various units claimed in Figure 2 are listed as “a specific example of a hardware structure of cellular phone 1”.

Claims 61 and 62, based on the Examiner assertions, are computer programs that are considered functional descriptive material which must be recorded on a computer readable storage medium to be considered statutory. Claims 61 and 62 have been amended to overcome this rejection. Based on our review of the specification, page 62 of the specification provides adequate support for amending the claims to incorporate a computer readable medium.

Thus, it is respectfully requested that this rejection be withdrawn.

Claim Rejections under 35 U.S.C. §102 – Nakayama

Claims 45, 46, 49, 51, 52 and 58-62 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Nakayama (“Nakayama”, U.S. 2003/0079598). This rejection is respectfully traversed.

As discussed in the personal interview conducted at the U.S.P.T.O., the rejection under 35 U.S.C. § 102(e) is deficient. According to M.P.E.P. §2131, “a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” Verdegaal Bros. v. Union Oil Co. Of California, 814 F.2d 628, 631, 2 USPQ2d 1051 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the ...claims.” Richardson v. Suzuki Motor Co., 868 F.2d

1226, 1236, 9 USPQ2d 1913 (Fed. Cir. 1989). Thus, the Examiner has not presented a case for anticipation based on Nakayama.

It is clear that Nakayama does not disclose or suggest the features of the independent claims, as agreed to by the Examiners. Nakayama simply discusses music reproduction based on pattern packs (*See* ¶50). Furthermore, reproduction of bars of music and an editing program to edit music reproduction is discussed (*See* ¶53).

While Nakayama generally alludes to the functionality of a mobile phone includes sending and receiving messages, Nakayama does not discuss message data at all. Moreover, Nakayama does not discuss message creation information, editing message browsing information, reproducing message templates, etc. as claimed in the independent claims and as agreed by the Examiners.

For at least the reasons stated above, independent claims 45 and 58-62 are patentably distinct from Nakayama. Claims 46, 49, 51 and 52 are at least allowable by virtue of their dependency on corresponding allowable independent claim.

Accordingly, it is respectfully requested to withdraw this anticipation rejection of claims 45, 46, 49, 51, 52 and 58-62 based on Nakayama.

Claim Rejections under 35 U.S.C. §103 – Nakayama, Saunders

Claims 47, 48 and 50 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Nakayama (“Nakayama”, U.S. 2003/0079598) further in view of Saunders et al. (“Saunders”, U.S. 2006/0288113). This rejection is respectfully traversed. Saunders does not remedy the noted deficiencies of Nakayama and thus cannot correct the defects of the Examiners rejection based solely on Nakayama.

Accordingly, it is respectfully requested to withdraw this obviousness rejection of claims 47, 48 and 50 based on Nakayama and Saunders.

Claim Rejections under 35 U.S.C. §103 – Nakayama, Drucker, Frietas

Claim 53 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Nakayama (“Nakayama”, U.S. 2003/0079598) in view of Drucker et al. (“Drucker”, U.S.

2003/0233460) further in view of Frietas et al. (“Frietas”, U.S. 2006/0235945). This rejection is respectfully traversed. Drucker and Frietas do not remedy the noted deficiencies of Nakayama and thus cannot correct the defects of the Examiners rejection based solely on Nakayama.

Accordingly, it is respectfully requested to withdraw this obviousness rejection of claim 53 based on Nakayama, Drucker and Frietas.

Claim Rejections under 35 U.S.C. §103 – Nakayama, Drucker, Buckner

Claim 54 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Nakayama (“Nakayama”, U.S. 2003/0079598) in view of Drucker et al. (“Drucker”, U.S. 2003/0233460) further in view of Buckner et al. (“Buckner”, U.S. 2001/0054078). This rejection is respectfully traversed. Drucker and Buckner do not remedy the noted deficiencies of Nakayama and thus cannot correct the defects of the Examiners rejection based solely on Nakayama.

Accordingly, it is respectfully requested to withdraw this obviousness rejection of claim 54 based on Nakayama, Drucker and Buckner.

Claim Rejections under 35 U.S.C. §103 – Nakayama, Buckner

Claim 55 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Nakayama (“Nakayama”, U.S. 2003/0079598) in view of Buckner et al. (“Buckner”, U.S. 2001/0054078). This rejection is respectfully traversed. Buckner does not remedy the noted deficiencies of Nakayama and thus cannot correct the defects of the Examiners rejection based solely on Nakayama.

Accordingly, it is respectfully requested to withdraw this obviousness rejection of claim 55 based on Nakayama and Buckner.

Claim Rejections under 35 U.S.C. §103 – Nakayama, Kaneko

Claims 56 and 57 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Nakayama (“Nakayama”, U.S. 2003/0079598) in view of Kaneko et al. (“Kaneko”, U.S. 2006/0041634). This rejection is respectfully traversed. Kaneko does not remedy the noted

deficiencies of Nakayama and thus cannot correct the defects of the Examiners rejection based solely on Nakayama.

Accordingly, it is respectfully requested to withdraw this obviousness rejection of claims 56 and 57 based on Nakayama and Kaneko.

CONCLUSION


In view of the above amendment and remarks, applicant believes the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Charu K. Mehta, Reg. No. 62,913, at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

Dated: July 27, 2009

Respectfully submitted,

By 

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